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March 8, 2022

Forced Labor Enforcement Task Force

RE: Comments on Docket No. DHS-2022-0001; Notice Seeking Public Comments on Methods to Prevent Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China, especially in the Xinjiang Uyghur Autonomous Region, Into the United States

Submitted by Ray Curry, President, International Union UAW at:
<https://www.regulations.gov/docket/DHS-2022-0001>

The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) respectfully submits comments for the implementation of the Uyghur Forced Labor Prevention Act.

We appreciate the focused list of questions which the Department of Homeland Security (DHS) has provided on behalf of the Forced Labor Enforcement Task Force (FLETF).

Please see our responses to some of the questions posed in the docket. We offer responses to questions that are within the scope of our expertise.

1. What are the risks of importing goods, wares, articles and merchandise mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China, including from the Xinjiang Uyghur Autonomous Region or made by Uyghurs, Kazakhs, Kyrgyz, Tibetans, or members of other persecuted groups in any other part of the People's Republic of China?

For good reasons, importing goods that are made with forced labor is a violation of U.S. and most other importing country's laws. Risks posed by such violations include undercutting U.S. workers' wages and benefits, as well as creating an unlevel playing field for U.S. manufacturing.

Companies that import goods made with forced labor benefit economically and enable the government of the People's Republic of China (PRC)'s to continue their repressive campaign against ethnic and religious minorities. The use of forced labor is not only a tool used to persecute entire populations, but it is also integral to the current global economic model.

The lack of effective global governance creates a downward pressure on wages, benefits, and working conditions for all workers in the global economy. Dependence on this economic model undermines and debilitates other economic models that are free from forced labor.

2. To the extent feasible, as part of the assessment of risks, what mechanisms, including the potential involvement in supply chains of entities that may use forced labor, could lead to the importation into the United States from the People's Republic of China, including through third countries of goods, wares, articles and merchandise mined, produced, or manufactured wholly or in part with forced labor?

The deceptive practice of transshipping products made with forced labor in China to the United States through third countries circumvents import regulations. Countries known to play this role in goods imported into the United States include Malaysia, Thailand, and Vietnam. Given the widespread public attention to goods made with forced labor in recent years, it is increasingly unlikely that goods imported into the United States will bear the names and markings of regions and companies known to be associated with forced labor. The relative ease with which importers can disguise these identifiable markings underscores the critical need for effective global governance to hold importers accountable and verify the details of their supply chains.

The North American automobile industry is a large and complex business sector. Many of the components to assemble vehicles in the United States are manufactured in Mexico and Canada. While the USMCA established the FLETF to monitor U.S. enforcement of prohibiting goods made with forced labor, the U.S. government should enhance its engagement with the governments of Mexico and Canada through existing mechanisms and improved enforcement. This is to ensure that these countries do not also use products made in the PRC and by forced labor.

3. What procedures can be implemented or improved to reduce the threats identified in Question 2?

Global cooperation between the United States and countries involved at any point of the production or distribution of goods -- made in part or wholly with goods from China -- is crucial to inform and verify proof that forced labor was not used in the mining, production, or distribution of any goods imported to the United States.

Countries involved in the production and distribution of goods, especially those identified to be of priority sectors, are and should be prepared to provide import data of any goods that are eventually imported to the United States.

In addition, we encourage the U.S. Government to urge the governments of Mexico and Canada to enact legislation like the Uyghur Forced Labor Prevention Act and commit the necessary resources for robust customs enforcement.

4. What forms does the use of forced labor take in the People's Republic of China and the Xinjiang Uyghur Autonomous Region? For example, what "pairing assistance" and "poverty alleviation" or other government labor schemes exist in the People's Republic of China that include the forced labor of Uyghurs, Kazakhs, Kyrgyz, Tibetans, or members of other persecuted groups outside of the Xinjiang Uyghur Autonomous Region? What similar programs exist in which work or services are extracted from Uyghurs, Kazakhs, Kyrgyz, Tibetans, or members of other persecuted groups under the threat of penalty or for which they have not offered themselves voluntarily?

It has been well documented that forced labor in the Xinjiang Uyghur Autonomous Region is occurring at internment camps. In 2016, the PRC began interning almost one million indigenous people of the region in violation of international human and labor rights standards. The PRC claims the internment camps are part of its so-called "anti-terrorism" and "poverty alleviation" campaigns.

The PRC attempts to disguise rounding up this massive number of people as "vocational training." Many detainees are required to work. Companies often locate factories within these camps, but others receive workers each day at facilities near the camps to provide forced labor, again a blatant violation of international law.

PRC-sponsored labor transfer programs of the persecuted groups within the Uyghur region and elsewhere in China have been documented through publicly available sources in China, including government documents and media reports. For those outside the camps, the government makes it mandatory that at least one person from every impoverished household accept a state-mandated labor transfer to a factory or farm so they can harvest and process agricultural products. The PRC has deployed untold numbers of state employed labor recruiters who mandate work assignments, as well as compulsory vocational, ideological, and Chinese language training for millions of people. In other words, cultural erasure.

Many people have been "transferred" thousands of miles into other parts of China to work in factories. A widely circulated government-issued document listed refusal to participate in "government assistance programs" as a sign of terrorism or extremism, indicating that refusal of a labor transfer could be punishable by internment or imprisonment.

For the purposes of enforcement of the UFLPA, the labor transfer programs are the most challenging to detect. Under these labor transfer programs, ethnic minorities are placed in jobs, including in factories, in Xinjiang and elsewhere in China. This means that any goods made anywhere in China could be tainted with forced labor.

5. What goods are mined, produced, or manufactured wholly or in part with forced labor in the Xinjiang Uyghur Autonomous Region or by entities that work with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor, or receive forced labor?

Uyghurs for Sale, a report issued by the Australian Strategic Policy Institute (ASPI) in March of 2020, highlighted and documented the use of Uyghur forced labor by multinational companies. The report conservatively estimated that more than 80,000 were transferred out of Xinjiang to work in factories

across China between 2017 and 2019. The report documented forced labor in the cotton and garment sectors among others. Forced labor transfers in the automotive sector include the following:

- 1,200 Uyghurs sent from Xinjiang to Jiangxi in May 2017 to work at O-film Technology and produce compact camera modules for six named auto companies.
- Over 1,000 were also sent to Hefei in November 2017 to produce electronic components for LCD and displays for five named auto brands.

6. In addition to cotton, tomatoes, and polysilicon, are there any other sectors which should be high priority for enforcement?

Based on the ASPI report, high-priority enforcement should also focus on the automotive sector, especially vehicle parts that have electronic and semiconductor components such as electric vehicle batteries, camera modules, video displays, sensor technology, and other electronic modules. Research conducted by Sheffield Hallam University's Helena Kennedy Centre for International Justice also revealed that forced labor has been used in the production of lead acid batteries used in automobiles and aluminum, a foundational material used in the automotive and aerospace industries.

7. What unique characteristics of such high-priority sector supply chains, including cotton, tomato, and/or the polysilicon supply chains, need to be considered in developing measures to prevent the importation of goods mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China?

In developing measures to prevent the importation of goods mined, produced, or manufactured with forced labor in the PRC, we recommend that all importers trace their entire supply chains -- from raw materials to the final product.

We urge vigilance regarding fraud, mislabeling, and deception perpetrated by entities attempting to camouflage Xinjiang-made goods in their supply chains. Numerous credible reports identified falsified documents, intentional misrepresentations in supply chain tracking platforms, and deliberate deception on the part of suppliers in the months since the Xinjiang-related Withhold Release Orders (WRO) were issued by the U.S. Customs and Border Protection on products made with forced labor.

8. How can the United States identify additional entities that export products that are mined, produced, or manufactured wholly or in part with forced labor in the Xinjiang Uyghur Autonomous Region or by entities that work with the government of the Xinjiang Uyghur Autonomous Region to recruit, transport, transfer, harbor, or receive forced labor?

To identify additional entities that export goods made with forced labor from any region in China, the United States should establish a list that includes but is not limited to:

- Companies that have businesses located in in XUAR; and
- Companies and any other entities ever involved in transfer programs.

This information has been made publicly available by the PRC government through the substantial disclosure of operations of corporate entities in China, their affiliates, business activities, and addresses.

Further, the United States should capture and analyze the growth of “new” companies in China that will no doubt begin to emerge as companies attempt to avoid or remove their association with forced labor.

Also, credible forced labor testimonials from workers at a specific company in China or their close relatives should raise an immediate flag on that company and relevant entities working along the supply chain to export goods into the United States. Important sources for worker input and verification can come from labor unions, labor and human rights nongovernmental organizations, and international bodies such as the International Labor Organization and Office of the United Nations High Commissioner for Human Rights.

11. What due diligence, effective supply chain tracing, and supply chain management measures can importers leverage to ensure that they do not import any goods mined, produced, or manufactured wholly or in part with forced labor from the People's Republic of China, especially from the Xinjiang Uyghur Autonomous Region?

Companies should be able to track their entire supply chain from raw materials to the final product and be able to provide receipts for all suppliers and sub-suppliers. They should also be able to prove that the volume of goods they are importing can be produced with the volume of materials received by their suppliers and that their suppliers have the production or manufacturing capacity to meet this volume of goods. For each supplier, there should be a record of how the importer has actively monitored the accuracy of the information provided by a supplier.

Corporate-driven schemes and multi-stakeholder initiatives (MSIs) to monitor labor conditions in global supply chains have consistently failed to ensure protection for human and labor rights in industries and countries around the world. Such corporate-led and legally unenforceable schemes are particularly unsuited to China and especially the Uyghur Region, where local authorities not only fail to cooperate with due diligence procedures but often perpetuate and administer the forced labor system in the first links of numerous global supply chains.

Corporate due diligence measures cannot substitute for robust monitoring and enforcement by the U.S. Customs and Border Protection (CBP). Most company’s due diligence programs existed amid widespread and well-documented forced labor in the Uyghur Region without most multinational corporations announcing a responsible exit plan.

Meaningful action from tracing a company’s supply chain will only come when it is used to enforce laws like the UFLPA. Unless companies are held legally accountable for their use of forced labor, the global economy will continue to depend on and enable its use.

12. What type, nature, and extent of evidence can companies provide to reasonably demonstrate that goods originating in the People's Republic of China were not mined, produced, or manufactured wholly or in part with forced labor in the Xinjiang Uyghur Autonomous Region?

Given the impossibility to access and accurately verify compliance with any standard in the Xinjiang region (as expressed in our comment to question 11), there is likely no evidence a company can provide to reasonably prove that goods originating from the region are free of forced labor. The FLETF should consider that any auditing conducted in the XUAR is conducted under false pretenses.

15. What measures can be taken to trace the origin of goods, offer greater supply chain transparency, and identify third-country supply chain routes for goods mined, produced, or manufactured wholly or in part with forced labor in the People's Republic of China?

Companies have a responsibility to trace every step of their supply chains down to the raw materials. The current economic system was built to deliberately complicate and conceal global supply chains, providing companies' plausible deniability of knowledge over their own goods. This plausible deniability is inexcusable and must no longer be tolerated.

If an importer is unable to trace and provide adequate documentation for any product known to be tainted with forced labor, the presumption that that forced labor was used should stand.

16. How can the U.S. Government coordinate and collaborate on an ongoing basis with appropriate nongovernmental organizations and private sector entities to implement and update the strategy that the FLETF will produce pursuant to the UFLPA?

FLETF should consider creating a federal advisory committee of labor, environmental, and human rights groups. The Government must also support such a committee by providing it access to information and an adequate platform with which to do its work effectively.

18. Is there any additional information the FLETF should consider related to how best to implement the UFLPA, including other measures for ensuring that goods mined, produced, or manufactured wholly or in part with forced labor do not enter the United States?

We encourage the Administration to work with its counterparts in other governments to coordinate diplomatic and economic action regarding China's human rights violations against the Uyghur people.

The Administration, with congressional oversight, should continue to engage with counterparts in the United Nations generally and the International Labor Organization specifically, to end the violations of the human rights of the Uyghur people.

Through the Organization for Economic Cooperation and Development (OECD), the Administration should develop a common response to business conduct as it relates to the Uyghur Region, including coordination among National Contact Points regarding specific instances related to forced labor violations.

It is a matter of urgency the United States act to safeguard U.S. trade interests and promote the protection of human rights abroad. The UAW has a direct stake in implementing the Uyghur Forced Labor Prevention Act and will continue to work with the administration to achieve these ends. Thank you for the opportunity to submit comments on this matter.

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